

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, *et al.*,

Plaintiffs

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1233 (CKK)

**ORDER**

Pending before the Court is an oral request by non-Party Advanced Micro Devices, Inc. (“AMD”) to seal a portion of these proceedings. AMD Chairman, CEO, and founder W.J. Sanders III has been presented as a witness by Defendant Microsoft in conjunction with a hearing being held on the appropriate remedy for antitrust violations found by the District Court in this case and affirmed by the Court of Appeals. Having received proffers from AMD and Plaintiffs, the Court concludes that AMD’s motion to close the courtroom for a limited period of time shall be granted.

In response to AMD’s motion, the Court discussed the issue with counsel for Plaintiffs, Microsoft, and AMD in a bench conference, the transcript of which remains under seal and is incorporated herein by reference. To summarize, during his cross-examination of Mr. Sanders, counsel for Plaintiffs plans to ask questions relating to the timing and content of AMD’s marketing strategy for the forthcoming Hammer-generation of microprocessors. Mr. Sanders’ responses to this line of questioning are likely to elicit confidential business information. The release of this confidential business information would prove detrimental to AMD’s competitive

standing. Due to the confidentiality of the business information at issue, the Court will not recount the details of the harm to AMD's competitive interests in this Order, but shall incorporate those details by reference to the bench conference conducted on the record and under seal on April 16, 2002. The parties and AMD agree that the relevant portion of the cross-examination and redirect examination should be conducted under seal.

Case law from the D.C. Circuit acknowledges that, in general, "[t]he first amendment guarantees the press and the public a general right of access to Court proceedings." *Washington Post v. Robinson*, 935 F.2d 282, 287 (D.C. Cir. 1991). However, this right of access is far from absolute, as courts have recognized numerous exceptions to the general rule of openness. *See Nixon v. Warner Communications*, 435 U.S. 589, 598 (1978) (listing various exceptions). Although much of the available case law on the subject of openness arises in the criminal context, the "presumption of openness" applies in the civil context as well. *See Johnson v. Greater Southeast Community Hosp. Ctr.*, 951 F.2d 1267, 1277 (D.C. Cir. 1991). This presumption may be overcome "by an overriding interest based on findings that disclosure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 510 (1984). Protecting an entity's "competitive standing" through retained confidentiality in business information has been recognized as an appropriate justification for the restriction of public or press access. *Nixon*, 935 F.2d at 287.

In light of Plaintiffs' proffered line of inquiry and AMD's proffered business interest in maintaining confidentiality, the Court finds that any release of the information discussed in the bench conference would result in "clearly defined and very serious injury" to AMD's business interest. *United States v. Exxon Corp.*, 94 F.R.D. 250, 251 (D.D.C. 1981) (quoting *United States*

*v. International Business Machines, Corp.*, 67 F.R.D. 40, 46 (S.D.N.Y. 1975)). As a result, the Court concludes that the States' inquiry and the redirect by Microsoft regarding these subjects should be conducted under seal, in a closed courtroom. In this regard, the Court notes that the closure of the courtroom and the sealing of testimony is narrowly tailored to include only the specific information which, if released, would be detrimental to AMD's business interest. *See Press-Enterprise*, 464 U.S. at 510. The relevant information has heretofore remained confidential and would not become public but for its use in these proceedings. Other portions of the cross-examination of Mr. Sanders will be held in open court and on the public record, as will all other appropriate portions of evidence in this proceeding.

Accordingly, it is this 16th day of April, hereby

**ORDERED** that the above-specified portions of proceedings in this case shall be conducted under seal.

**SO ORDERED.**

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COLLEEN KOLLAR-KOTELLY  
United States District Judge